



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2022-0007]

Potomac River at the Naval Surface Warfare Center, Dahlgren Division, Dahlgren, Virginia; danger zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend its regulations for an existing danger zone in the waters of the Potomac River near Dahlgren, Virginia.

The Naval Surface Warfare Center, Dahlgren Division (NSWCDD) operates research, development, testing, and evaluation ranges on the Potomac River using the danger zones as defined in the existing regulation. The NSWCDD range operations center controls Navy operations on the Potomac River Test Range. The purpose of this amendment is to expand the middle danger zone for ongoing infrared sensor testing for detection of airborne chemical or biological agent simulants, directed energy testing, and for operating manned or unmanned watercraft. This amendment will extend the legal authority to engage civilian watercraft for safe transit instructions in the Potomac River within the expanded middle danger zone.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2022-0007, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2022-0007 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2022-0007. All comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](https://www.regulations.gov) or e-mail. The [regulations.gov](https://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](https://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and also include your contact information with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the

use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, D.C. at 202-761-4922.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend its regulations at 33 CFR Part 334 to modify an existing danger zone in the Potomac River for the Naval Surface Warfare Center, Dahlgren Division (NSWCDD) near Dahlgren, Virginia. In a memorandum dated April 27, 2022, the NSWCDD requested that the Corps modify section 334.230(a)(1)(ii) to expand the existing middle danger zone to ensure safe Navy operations on the Potomac River Test Range and to extend the NSWCDD's legal authority to engage civilian watercraft for safe transit instructions in the Potomac River within the expanded middle danger zone. All vessels may transit the expanded middle danger zone area at the conclusion of hazardous operations without the permission of the Commander, NSWCDD and such agencies as they may designate.

Procedural Requirements

a. Regulatory Planning and Review. This proposed rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq. This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments).

This proposed rule has been reviewed under the Regulatory Flexibility Act. The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The expansion of the middle danger zone is necessary to protect public safety and satisfy the Navy’s requirements for weapons training. Small entities can utilize navigable waters outside of the danger zone when the danger zone is activated. Small entities can use the navigable waters within the danger zone when it is inactive. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public.

c. Review under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no significant intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act. This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.230(a)(1)(ii) to read as follows:

§ 334.230 Potomac River.

(a) * * *

(1) * * *

(i) * * *

(ii) *Middle zone.* Beginning approximately 140 yards south of the Governor Harry W. Nice Memorial/Senator Thomas “Mac” Middleton Bridge, extending from the Virginia shore at latitude 38°21'30.4", longitude 77°0'53.2" along a line parallel to the Bridge to latitude 38°21'45.6", longitude 76°59'0" a point near the Maryland shore; thence to latitude 38°20'5", longitude 76°59'0"; thence to latitude 38°19'06", longitude 76°57'06" which point is about 3,300 yards east-southeast of Light 30; thence to Line of Fire Buoy O, about 1,150 yards southwest of Swan Point; thence to Line of Fire Buoy M, about 1,700 yards south of Potomac View; thence to Line of Fire Buoy K, about 1,400 yards southwesterly of the lower end of Cobb Island; thence to Buoy 14, abreast of St. Clements Island, thence southwest to a point near the northeast shore of Hollis Marsh at latitude 38°10'00", longitude 76°45'22.4"; thence northwest to Line of Fire Buoy J, about 3,000 yards off Popes Creek, Virginia; thence to Line of Fire Buoy L, about 3,600 yards off Church Point; thence to Line of Fire Buoy N, about 900 yards off Colonial Beach; thence to Line of Fire Buoy P, about 1,000 yards off Bluff Point; thence northwest to latitude 38°17'54", longitude 77°01'02", a point of the Virginia

shore on property of the Naval Support Facility Dahlgren, a distance of about 4,080 yards; thence north along the Potomac shore of Naval Surface Warfare Center, Dahlgren to Baber Point; thence west along the Upper Machodoc Creek shore of Naval Surface Warfare Center, Dahlgren to Howland Point at latitude 38°19'0.5", longitude 77°03'23"; and thence northeast to latitude 38°19'18", longitude 77°02'29", a point on the Naval Surface Warfare Center, Dahlgren shore about 350 yards southeast of the base of the Navy recreational pier. Hazardous operations are normally conducted in this zone daily except Saturdays, Sundays, and national holidays. The datum for the coordinates for this zone is North American Datum of 1983 (NAD-1983).

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Thomas P. Smith,
Chief, Operations and Regulatory Division.